

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY  
SPENCER, and KATHERINE E. TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING  
ATTORNEY FOR CLARK COUNTY  
JAMES M. PETERS, DETECTIVE SHARON  
KRAUSE, SERGEANT MICHAEL  
DAVIDSON, CLARK COUNTY  
PROSECUTOR'S OFFICE, CLARK  
COUNTY SHERIFF'S OFFICE, THE  
COUNTY OF CLARK, and JOHN DOES  
ONE THOROUGH TEN,

Defendants.

No. 3:11-cv-05424-BHS

AFFIDAVIT OF KATHLEEN T.  
ZELLNER IN SUPPORT OF  
MOTION FOR RELIEF  
PURSUANT TO FED. R.  
CIV. 56(d)

The undersigned duly sworn and upon her oath, deposes and states as follows:

1. The undersigned duly sworn and upon her oath, deposes and states as follows:

1. My name is Kathleen T. Zellner, and I am lead counsel representing the  
Plaintiffs in the above-captioned matter.

2. I submit this affidavit in support of Plaintiffs Motion Pursuant to Federal Rule of  
Civil Procedure 56(d).

3. Attached to this affidavit as Exhibit 1 is a true and correct copy of an excerpt  
from Defendant Peters deposition from the habeas proceedings, Case No. C94-5238 RJB, as  
disclosed to Plaintiffs' counsel in Defendants' initial disclosures.

AFFIDAVIT OF KATHLEEN T. ZELLNER  
(3:11-cv-05424-BHS) – 1  
DWT 19803819v1 0094078-000001

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206 622 3150 main · 206 757 7700 fax

1           4.       Attached to this affidavit as Exhibit 2 is a true and correct copy of an excerpt  
2 from Defendant Peters' testimony from the habeas proceedings, Case No. C94-5238 RJB, as  
3 disclosed to Plaintiffs' counsel in Defendants' initial disclosures.

4           5.       Attached to this affidavit as Exhibit 3 is a true and correct copy of the report of  
5 medical examination of Kathryn Spencer performed by Dr. Magee, as disclosed to Plaintiffs'  
6 counsel in Defendants' initial disclosures.

7           6.       Attached to this affidavit as Exhibit 4 is a true and correct copy of an excerpt  
8 from Defendant Krause's testimony from the habeas proceedings, Case No. C94-5238 RJB, as  
9 disclosed to Plaintiffs' counsel in Defendants' initial disclosures.

10          7.       Attached to this affidavit as Exhibit 5 is a true and correct copy of the report of  
11 medical examination of Matthew Hanson performed by Dr. Galaviz, as disclosed to Plaintiffs'  
12 counsel in Defendants' initial disclosures.

13          8.       Attached to this affidavit as Exhibit 6 is a true and correct copy of an excerpt  
14 from Defendant Davidson's testimony from the habeas proceedings, Case No. C94-5238 RJB,  
15 as disclosed to Plaintiffs' counsel in Defendants' initial disclosures,

16          9.       Plaintiffs' counsel has a reasonable and good faith belief that the requested  
17 discovery, including the depositions of all named Defendants, is necessary to address the  
18 complex legal and factual matters raised in Defendant Peters' motion for summary judgment.

19          10.      Based upon a review of the documents disclosed to-date, a reasonable and good  
20 faith belief exists that the following facts will be obtained if Plaintiffs' counsel is allowed to  
21 proceed with the requested discovery, including the depositions of all the Defendants:

22               a.       Defendant Peters was involved in the investigation of Mr. Spencer by,  
23 among other things, questioning Kathryn Spencer when no charges were  
24 pending against Mr. Spencer and, in fact, the prosecutor's office had declined to  
press charges.

25               b.       Defendant Peters coerced and manipulated Kathryn Spencer into making  
26 false statements against Mr. Spencer.  
27

1 c. Defendant Peters concealed the exculpatory videotape of his interview  
2 with Kathryn Spencer by, among other things, removing it from the prosecutor's  
3 file.

4 d. Defendant Peters concealed exculpatory notes of his interview with  
5 Kathryn Spencer by,, among other things, removing them from the prosecutor's  
6 file.

7 e. Defendant Peters concealed the fact that he had coerced and manipulated  
8 Kathryn Spencer into making false statements against Mr. Spencer.

9 f. Defendant Peters knew about the exculpatory medical examinations  
10 performed on Kathryn Spencer and Matthew Hanson prior to Mr. Spencer's  
11 *Alford* plea, or, in the alternative, Defendants Krause and Davidson failed to  
12 provide the exculpatory medical examinations to Defendant Peters.

13 g. Defendant Peters concealed the exculpatory medical examinations by,  
14 among other things, removing them from the prosecutor's file. In the alternative,  
15 Defendants Krause and Davidson failed to provide the exculpatory medical  
16 examinations to Defendant Peters to disclose to the defense.

17 h. Defendant Peters conspired with the other named Defendants to withhold  
18 exculpatory evidence and continue the prosecution against Mr. Spencer up until  
19 the date the charges were dropped against Mr. Spencer.

20 i. Defendant Peters knew that Defendants Krause and Davidson engaged in  
21 coercive and manipulative interview tactics with Matthew Hanson, Matthew  
22 Spencer and Kathryn Spencer.

23 j. Defendant Peters met with Defendants Krause and Davidson on multiple  
24 occasions to discuss coercive interview techniques and the most effective ways  
25 of procuring incriminating statements from the children.

26 k. Defendant Peters knew that Defendants Davidson and Shirley Spencer  
27 were engaged in a romantic, sexual relationship during the investigation of Mr.  
Spencer, and failed to disclose the relationship to Mr. Spencer.

l. Defendants Krause and Davidson conveyed information regarding  
allegations of sexual abuse to Defendant Peters they knew or should have known  
to be false.

m. Defendant Peters personally attested to facts he knew to be false in the  
motion and affidavit for Mr. Spencer's second arrest warrant. Defendant Peters  
likewise omitted the exculpatory evidence to mislead the magistrate issuing the  
arrest warrant.

1 n. Defendants Peters, Krause and Davidson knew that apart from the  
2 coerced, false statements attributed to Matthew Spencer, Matthew Hanson and  
Kathryn Spencer there was no evidence of any sexual abuse by Mr. Spencer.

3 o. In the above-described manner, Defendants Peters, Krause and Davidson  
4 alone and in concert with each other fabricated evidence and concealed  
5 exculpatory evidence as a means of fabricating probable cause to arrest and  
prosecute Mr. Spencer.

6 p. In the above-described manner, Defendants Peters, Krause and Davidson  
7 alone and in concert with the other Defendants mislead the prosecuting attorney  
into filing charges against Mr. Spencer.

8 q. Defendant Peters continued the conspiracy by, among other things, lying  
9 under oath as to his interview of Kathryn Spencer in December of 1984, and  
lying as to his knowledge of the medical examinations of Kathryn Spencer and  
10 Matthew Hanson in the habeas proceedings.

11 r. Defendant Krause mislead the court during Mr. Spencer's habeas  
12 proceedings by testifying that the medical reports were not inconsistent with the  
putative allegations of abuse.

13 s. Defendant Clark County Prosecuting Attorney's Office and Defendant  
14 Clark County Sheriff's Office had an unwritten custom and practice of  
concealing exculpatory information and reports from the prosecutor's file.

15 11. Plaintiffs' counsel has a reasonable and good faith belief that the above-  
16 described facts will defeat Defendant Peters' motion for summary judgment.

17 12. Plaintiffs' counsel has been diligent in reviewing discovery, which includes  
18 thousands of pages of documents spanning close to 30 years of investigation and court  
19 proceedings. Plaintiffs' counsel continues to try and locate witnesses to interview them.  
20 Simultaneous with the filing of this motion, Plaintiff's counsel is issuing written interrogatories  
21 to the Defendants in anticipation of taking their depositions.

22 13. Plaintiffs seek to depose the Defendants not for purposes of delay, but because  
23 the requested discovery is essential to properly responding to Defendant Peters' motion for  
24 summary judgment.

25 Further Affiant Sayeth naught.  
26  
27

1 I declare under penalty of perjury that the foregoing is true and correct.


2 Executed this 18 day of June, 2012, in Downers Grove, Illinois.

3  
4 

5 Kathleen T. Zellner

6 State of Illinois )  
7 ) SS.  
8 County of DuPage )

9 Subscribed and sworn to before me, a Notary Public, this 18 day of June, 2012.

10   
11 Notary Public

12 My commission Expires:

